Secrt. II-27—58,004—27-10-47.

Rev (194 8) Department.

Ms SERIES.

G.O. NO. 1513

Dated 25.6.1948

closed
M
5/5
Supdt

[Despatch Abstract.]

Assessment - charge for water - (Bellary) - Nagala cheruvu tank - Water drawn for manufacture of arrack - Arrack distillery, Bellary - Back charges - Proposals for recovery - Dropped

Revenue Department
Subject.

R 25320 GOVERNMENT

113

Assessment - Charge for water (Bellary) - Bellary town - Nagalacheruvu tank - Drawing of water for ~~manufacture~~ of arrack - Arrack Distillary - Bellary - Back charges - Proposals for recovery - Dropped.

- -

Station: Madras. Ref. 5855 G/47-3. Dated 23rd April '48.

From

C.A. Ramakrishnan, Esq., ICS.,
Joint Secretary, Board of Revenue.

V.N. KUDVA, Esq., CIE., ICS.,
Commissioner of Land Revenue, Excise and Prohibition.

Read: From The Collector of Bellary Rc. 4502/45 A3, dt. 22-8-47.
From The Collector of Bellary Rc. 4502/45 A3, dt. 30-12-47.
From The Collector of Bellary, Rc.4502/45 A3, dt. 8-3-'48.

REFERENCE:

Submitted to Government.

2. It is seen from the Government Pleader's opinion that it is difficult to sustain a suit claiming any charge for the use of water. The Board recommends that as the party is not willing to pay anything, the matter may be dropped.

for Joint Secretary.

Encl:

To The Secretary to Government,
Revenue Department, Fort St. George, Madras.
(with enclosures).

VSS.26.4.

ENCLOSURE.

Copy of letter No. 4502/45 A3, dated 22-8-47 from the Collector of Bellary, to the Secretary, Board of Revenue.

Assessment - Charge for water - Bellary town - Nagalacheruvu tank.

--

The Archaelogical Department of the Government of India, permitted the Fisheries Department in 1945 to conduct Pisciculturel operations in the Nagalacheruvu tank (in Cowl Bazaar Bellary) which is the property of the Archaelogical Department. Prior to such transfer of the tank to the Fisheries Department, the Fishery rentals fetched by the lease of the tank, used to be credited to XXXVI. Misc. Depts. Archaeological Survey of India. The sale of the fishery rights has been discontinued, with the transfer of the tank to the Fisheries Department for conduct of Piscicultural operations since 1945.

2. The Fisheries Department on taking over the tank objected to the use of water from the tank by the Proprietor of the Arrack Distillery Bellary, who had been using the water, for manufacture of arrack. The proprietor of the Distillery, on being prevented from utilising the water, issued a notice on the Fisheries Department, that the Distillery cannot be prevented from drawing water from the said tank, as it had been doing so for over 50 years since the inception of the distillery. It was not discovered until then that the Distillery had been drawing water from the said tank, for manufacture of arrack. On being asked to state, the quantity of water drawn by him every year, for the manufacture of Arrack, the Proprietor informs that there are no accounts maintained by him, to give exact figures and that all Distillery accounts were made over to the Excise Department on introduction of Prohibition. The Inspector, Northern Distillery circle, on being asked to furnish figures relating to the actual quantity of arrack manufactured and the probable quantity of water used, gives the quantity of arrack manufactured during the years 1939-40 to 1943-44 and states that probably 4,05,000/- gallons of water might have been used every year, on an average. The proprietor of the distillery says that not all the quantity of water required by the distillery was drawn from the tank, but that water was drawn from four other sources i.e., wells situated at a distanee from the distillery . The contention of the Proprietor cannot be accepted as the wells are situated at a considerable distance, and the primary source must have been the Nagalacheruvu tank itself. In the absence of authentic figures to show the actual quantity of water used by the distillery, the average of 4,05,000 gallons or 2400 C.Yds. (1 C.Yd. 168 3/4 gallons) as suggested by the Inspector of Distilleries may be adopted for purposes of calculating charges for water at Rs.8/- per 100 C.Yds. according to B.S.O. 11 A, as the water was drawn by hand only.

3 The Proprietor of the distillery has admitted that he had been drawing water from the Nallacheruvu tank, since its (distillery) inception, some 50 years back. According to Board's No. I.2419/37.5 dated 29-7-38 Collection of Back assessment on land is limited to the period of occupation or 10 years, whichever is less. The point for consideration now is whether the levy of charge for water should be limited to 10 years on the anology of the Board's Reference cited above or whether it should be done for the whole period, i.e., from the time of the inception of the distillery, some 50 years back. The charge for water was not levied all these years. On enquiry the Tahsildar Bellary reports that no water charge was levied as it was not known whether the water taken was intended for distillery or for domestic purposes. And the Proprietor has used water from four Private wells besides this tank. The proprietor has not maintained any account of the

water used from the tank. As such, it is not possible to say how much water from the tank was used each year. The proprietor states that for the last 50 years, water was being used from this tank without any payment of water charge and presumes that permission might have been granted as the Distillery has been a source of income to the Government. He further states that as the public have a vested right for the use of water from this tank, no charge was levied. In the absence of records as to the quantity of water used for the distillery, and in view of long usage without any charge, I request to be informed whether any charge should be levied, if so, for what period.

-True copy-

Copy of letter Rc. 4502/45.A3, dated 30-12-47 from the Collector of Bellary, to the Secretary, Board of Revenue.

Sub: Assessment - Charge for water - Bellary Town - Nagalacheruvu Tank - Drawing of water for manufacture of Arrack - Arrack distillery - Bellary - Back charges - Recovery - Report.

Ref: Your Ref. G.5855/47-1, dated 3-10-47.

The distillery is not working, since the introduction of Prohibition in this district from 1-10-46. The proprietor of the Distillery, Sri G.V.C. Babu Naidu, is not willing to pay any charges for the water drawn for manufacture of Arrack, on the ground that Nagalacheruvu Tank was a public source, entitling him for a free use of the water of the Tank. A copy of his statement before the Revenue Inspector, Bellary is enclosed. I once again invite your attention to my original report dated 22-8-47 in which the difficulties involved in collecting any water charge have been explained.

If however any water charge has to be collected, it has to be credited to "XXXVI-Misc. Dept. - Archaelogical Survey of India."

-True copy-

Copy of Statement of Sri G.V.C. Babu Naidu, Bellary before the Revenue Inspector, Bellary.

The Distillery is closed even since prohibition is introduced in this district (i.e.,) from 1-10-46. I am not willing to pay any charges for the water drawn for distillery purposes as it was not the only source from which water was drawn. The Nagalacheruvu has been a public source for water supply for the inhabitants of this town and no charge can be paid for the water used.

Sd. G.V.C. Babu, 29-10-47.

-True copy-

Copy of letter Rc. 4502/48 A3, dated 8-3-48 from the Collector of Bellary, to the Secretary to the Board of Revenue.

Sub: Assessment - Charge for water - Bellary town - Nagalacheruvu tank - Drawing of water for manufacture of arrack - Back charges.

Ref: Your G.No.5855/47-2, dated 29-1-1948.

The Government Pleader, Bellary who was consulted in the matter reports that the Government's claim for water drawn by the distillery since its inception is not legally maintainable. On the analogy of Government's right regarding collection of Back assessment on land it is limited to a period of ten years only. A copy of the Government Pleader's opinion is enclosed. I wonder

in...

in the circumstances whether it is still necessary to obtain the particulars as to the ownership of the distillery during the back 50 years and the status of the owner etc.

-True copy-

Copy of G.P.No.379 dated 5-3-48 from the Government Pleader, Bellary to the Collector, Bellary.

Assessment - Charges for water - Bellary - Nagalacheruvu tank water drawn for manufacture of arrack - Legal maintainability opinion - Given.

Ref: R.C.4502/48 dated 8-2-1948.

I have gone through all the papers carefully. This is a case which involves very complicated issues. The admitted facts are that for a period of 50 years the water of Nagalacheruvu tank, Bellary, was utilised for the manufacture of Arrack for the Bellary distillery. The question is whether the Government can now levy charges for the said use and if so for what period and whether such a suit will be maintainable.

It is by a mere accident that the Government discovered that water was used (vide letter of the distillery owner dated 8-8-45). On that letter the Government was set in motion and the authorities concerned have made an elaborate enquiry. As a result of this enquiry the Government is not in possession of satisfactory materials about its claim. Every fact has to be satisfactorily established in a court of law if the claim made is to be decreed.

On the face of it, it looks very extraordinary that a person should have been allowed to go on for 50 years without attracting Government notice. The distillery owner has taken one of the grounds that his father in whose time the distillery was started may have obtained permission which it is now not possible for him to trace out. Used for 50 years without any objection, raises the presumption of a lost grant.

The question that this is a tank to which the public have had access without any hindrance may also create much difficulty about the Government's right to levy water charges.

There are many other features in the case which are not clear from doubts.

About the period on the analogy of Government's right regarding collection of back assessment on land I think the claim of the Government cannot be for more than 10 years.

Taking all the circumstances into the case, its confused history and the doubtful nature of the Government's claim, I think there are many obstacles in regard to the Government's right to levy charges. The claim of the Government may not be legally maintainable. The records are all herewith sent and their receipt may kindly be acknowledged.

Sd. M.A. Basith,
Govt. Pleader.

-True copy-

for Joint Secretary.

VSS.26.4.

MP13
22/4

Copy of G.O.Ms.No.1513, Revenue, dated the 25th June 1948.

Sub:-ASSESSMENT--Charge for water--(Bellary)--Nagala Cheruvu tank--Water drawn for manufacture of arrack--Arrack distillery, Bellary--Back charges--Proposals for recovery--Dropped

Read the following:-
From the Board of Revenue, Ref.No.5855-G/47-3, dated 23/4/48.

O R D E R:-

In the circumstances reported, the Government agree with the Board of Revenue that the proposal for the recovery of the back charges from the defunct arrack-distillery, Bellary for the use of water for the distille from the Nagala Cheruvu Tank, Bellary Town, should be dropped.

(BY ORDER OF HIS EXCELLENCY THE GOVERNOR)

V.K.Rao,
Dy.Secretary to Govt.

To the Board of Revenue.

(True Copy)

G.R.28/4/49.

SUPERINTENDENT. 28/4

Cno 25330 H/41

G O - 15 13

Assessment - Charges for water - Bellary - Bellary Town - Nagalacheruvu tank - Drawing of water for manufacture of arrack - Arrack Distillery - Bellary - Back charges - Recovery - Proposals

F From the Board of Revenue Rc 585-41-3 d 23.4.48

To A.S

Please see the Board's Reference and the ~~enclosures~~ thereto in the C.F.

2. The proposal in this file relates to the recovery of back charges for the use of water from the Nagalacheruvu tank in Bellary town by the Arrack Distillery, ~~Bellary~~ Bellary. 2. The Nagalacheruvu tank which is the property of the ~~Archeological~~ Department of the Govt of India was transferred to the Fisheries Department of the Government in 1945 for the conduct of Pisciculture operations. The Fisheries Department on taking over the tank objected to the use of water by the Arrack Distillery. The proprietor of the Distillery thereupon issued a notice on the Fisheries Department that the ~~Fisheries Department~~ Distillery could not be prevented from drawing water from the tank for the manufacture of arrack, since it had been doing so from the inception of the Distillery some 50 years back. The Arrack Distillery has since been closed from 1946 on account of Prohibition and so the question of supplying any water to the Distillery therefrom does not arise. Incidentally, the question of recovery of back charges from the proprietor of the Distillery for using the water of the tank for 50 years was raised. The proprietor states that he has not maintained any accounts of

the quantity of water drawn from the tank for the manufacture of arrack and that the Distillery accounts were made over to the Excise Department on the introduction of Prohibition in 1946. He contends that for the last 50 years water was being used from the tank without any payment charge, and as such, permission might have been granted as the Distillery had been a source of income to the Government. He has not, however, produced any evidence of permission granted by the Government. He also contends that as the public have a vested right for the use of water from this tank, no charge was levied and that he took water from four other sources viz wells besides the Nagalacheru tank. He is not therefore prepared to pay any charges for the water drawn for the manufacture of arrack. The Collector considers that as the wells are situated at a considerable distance the primary source must have been the Nagalacheru tank. The Inspector, Northern Distilleries Circle on being asked to furnish figures regarding ~~the actual quantity of arrack manufactured~~ the probable quantity of water used reported that about 4,05,000 gallons of water per year might have been used by the Distillery. According to BSO II A the rate of charge leviable for water taken by hand for industrial purposes is Rs 8/- for 100 c yds. In this case, the water is reported to have been taken by hand the total charge works to Rs 192/- for a year.

4. The Govt. pleader who was consulted in the matter reports that the claim

used should be restricted to 6 yrs on the analogy of Govt's right. Separate collection of back assessment on claim and that even such claim is not legally maintainable in this case in view of many obstacles in regard to Govt's right to levy charges and of the confused history and the doubtful nature of the claim the Board of Rev. recommend that in the circumstances, the matter may be dropped for orders whether the Board's recommendation will be accepted by the remarks of Legal PWD & Finance may be invited.

Rev
10.5.48

We may accept the boards recommendation and drop the matter.

Rev
13/5/48 DS

1.5.48

Legal

PWD

Fin.

Rev no
25330 H/487
21.5.48

I (A) above. I agree. There are no more matters requiring anything

1/6/48

Legal no 6114/487
4.6.48

II (A) PWD/Fin

Please see Rev dept. note at pp 1-3 above. In view of the legal difficulties mentioned above, this dept. also may agree with A above and pass on the file to Fin dept.

4/6/48

7.6.48

Fin

PWD 2496 N/48-1

ADDITIONAL DEPUTY SECRETARY
42828
7 JUN 1948
FINANCE DEPARTMENT

ASSISTANT SECRETARY
STE
11 MAY 1948
LEGAL DEPARTMENT

GOVERNMENT

For (AA).

The provisions of Regulation 5 above which have been agreed to by Legal and P.W.D. may be accepted as Finance also. The file may be returned to Rev.

RJ 8.6.48

Law 15.6.48

RJ 9.6.48

Fin. WO 42828 AA 1

9/6/48

DEPUTY SECRETARY TO GOVERNMENT
11 JUN 1948
REVENUE DEPARTMENT

R 3838 H
11/6/48

To A.S.

Please see the ~~notes of Legal, P.W.~~ from p. 1 and finance above, ~~& a~~ draft order is submitted ~~put up~~ for approval

ASR 16/6/48

23/6/48

MCR 24/6/48